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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Maurice Gerardus Maria Van Giezen

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Novak Druce + Quigg, LLP  
1300 Eye Street, NW, Suite 1000  
Suite 1000, West Tower  
Washington, DC 20005

EXAMINER

TOLAN, EDWARD THOMAS

ART UNIT

PAPER NUMBER

3725

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/501,989	<b>Applicant(s)</b> VAN GIEZEN, MAURICE GERARDUS MARIA	
	<b>Examiner</b> EDWARD TOLAN	<b>Art Unit</b> 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 29 recites the limitation "the mark" in line 1. There is insufficient antecedent basis for this limitation in the claim. There is no mark or symbol set forth in claim 7.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,4 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Brawner et al. (3,953,994). Brawner discloses a method of producing a hydroformed can body (29) for holding a pressurized fluid (beverages, foods). Brawner discloses that a cylindrical blank (25) is processed by hydroforming (col. 7, lines 20-30) and that a can lid and base are attachable (col. 1, lines 9-13 and 40-43). Brawner discloses (fig.12) that symbols and marks are formed in the can body. Brawner discloses (fig. 11) that

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embossed portions (729,791,793) are provided. It is inherent that the embossed portion provides grippable means and therefore is useable as a handling means.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5,9 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gabbianelli et al. (6,474,534) in view of Ross et al. (5,562,799). Gabbianelli discloses a method of hydroforming (column 2, lines 50-53, column 5, lines 54-65) a circumferential wall of tailor welded tubular blanks (30,32)(52,54)(90). The blanks (30,32) have different thicknesses (column 4, lines 20-21). Regarding claims 3 and 22, a compound blank (100) for two or more tubular structures is shown in figure 5, it is inherent that separation must occur for two different tubular structures to be formed. Different shaped open ended tubular structures are formed (column 6, lines 38-44). Gabbianelli does not disclose providing the open ended structure with a lid to form a closed container. Ross teaches sealing a thermoplastic lid (15) on a can body (21). It would have been obvious to one skilled in the art at the time of invention to provide the tubular structure of Gabbianelli with a lid as taught by Ross in order to create a container. Claim 1 requires an "optional top" it is obvious that the lid

of Ross can be considered to be either a base or top and the provision of a top and bottom lid is an obvious duplication of steps. When a peelable lid is provided the container is single use.

Regarding claim 9, absent claimed structure, any part of the container side wall can provide an attachment place for spot welding an ancillary handle.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gabbianelli in view of Ross and further in view of Gerhard (4,941,583). Gabbianelli in view of Ross does not disclose a tie rod. Gerhard teaches a hollow tie rod (14) that is attached to ends (12,13) of a pressure tank. It would have been obvious to one skilled in the art at the time of invention to provide Gabbianelli in view of Ross with a tie rod as taught by Gerhard in order to give structural rigidity to the container.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gabbianelli in view of Ross and further in view of La Croce (3,875,651). Gabbianelli in view of Ross does not disclose a releasably secured top and base. La Croce teaches a plastic lid (24) that is releasably secured to a can (50) by a clip (22). It would have been obvious to one skilled in the art at the time of invention to provide Gabbianelli in view of Ross with a releasable top as taught by La Croce for an easy opening top.

Claims 11-14 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gabbianelli et al. (6,474,534) in view of Ross et al. (5,562,799) and further in view of Frutin (5,980,959). Gabbianelli in view of Ross does not disclose a pressurization to about 6 bar. Frutin teaches pressurized vessels ranging from single

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shot to beer keg sized. In column 6, lines 35-40 Frutin teaches a container pressurized to 90-100 psi, (about 6 bar). It would have been obvious to one skilled in the art at the time of invention to substitute an optional top as taught by Frutin for the top of Gabbianelli in view of Ross in order to hold beverages at an elevated pressure.

Claims 15,17,18,19 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gabbianelli in view of Ross and Frutin and further in view of Brejcha et al. (3,358,487). Gabbianelli in view of Ross and Frutin does not disclose ribs and indicia on the container. Brejcha teaches that it is known to provide a beer barrel shaped hydroformed container (54) with ribs (92) for handling and indicia (94). It would have been obvious to one skilled in the art at the time of invention to provide Gabbianelli in view of Ross and Frutin with ribs and inidicia as taught by Brejcha in order to provide a handling aid and company symbols on the container.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gabbianelli in view of Ross and Frutin and further in view of Maxwell (4,049,122). Gabbianelli in view of Ross and Frutin does not disclose a nestable container. Maxwell teaches a pressurized container manufactured for stacking. It would have been obvious to one skilled in the art at the time of invention to provide the container of Gabbianelli in view of Ross and Frutin with a tapered shape as taught by Maxwell in order to nest the containers for shipment.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gabbianelli in view of Ross and Frutin and further in view of Gerhard (4,941,583). Gabbianelli in view of Ross and Frutin does not disclose a tie rod. Gerhard teaches a

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hollow tie rod (14) that is attached to ends (12,13) of a pressure tank. It would have been obvious to one skilled in the art at the time of invention to provide Gabbianelli in view of Ross and Frutin with a tie rod as taught by Gerhard in order to give structural rigidity to the container.

Claims 11-15,17,18 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brawner et al. (3,953,994) in view of Van Leer et al. (3,051,112). Brawner does not disclose that the container has a volume of 1-100 liters. Van Leer teaches that it is known to hydroform a drum (barrel) with a volume of about 50 gallons (col. 5, lines 19-21). Van Leer teaches (col. 6, lines 61-63) that bases and lids are seamed to the container body. It would have been obvious to one skilled in the art at the time of invention to hydroform larger container bodies in the invention of Brawner as taught by Van Leer in order to produce containers capable of holding large quantities of liquid. Regarding claims 12-14, Brawner and Van Leer hydroform small and large containers and it is well known to the container designer that generally, as pressure increases wall thickness must increase or else the container would burst, the skilled artisan would have been motivated to provide container sizes and wall thicknesses that are capable of handling the intended liquid. Soda, beer cans and drums are all capable of holding liquids under pressure.

### ***Response to Arguments***

Applicant's arguments filed 8-31-2009 have been fully considered but they are not persuasive. Applicant has argued that the rejection is based on hindsight with

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references from different fields of endeavor. The Examiner points out that claim 1 sets forth “the base, and optionally the top, are attached”. If a base and top are “optionally” attachable in a method claim how can the “container” be capable of holding pressurized fluid? The Examiner disputes the fact that as claimed, the “container” is an art recognized pressurizable container. Claims 12,15 and 27 (pressurization) are not really even possible in a “container” that has an optional top because the container would be a cup and would not be capable of holding fluid to a pressure of 6 or 12 bars or be capable of holding beer for storage. Applicant (page 6, last paragraph) is arguing a scope of claim that is not present in claim 1, therefore an argument of inoperability is not accepted.

The rejection of Gabbianelli in view of Ross and various other references has been made to respond to a scope of a closed container. The placing of tops and bases of metal and plastic upon a formed can body is well established in the field of container making when manufacturing two and three piece cans (for example) and the skilled artisan when given a circumferential wall form as disclosed by Gabbianelli would have a knowledge of available metal welded, plastic welded, metal seamed and plastic seamed tops and bases and therefore the Examiner maintains that there is not a need to provide evidence of design incentives and other market forces that would prompt placing of tops, bases on a form as set forth in Gabbianelli. Frutin (previously cited) has been cited in view of Gabbianelli and Ross to respond to Applicant’s request for Authority in claims 11-14.



Applicant has claimed various combinations of lids, bases, sidewalls and container sizes but the Examiner contends that the claimed combinations of sidewall hydroforming followed by providing container closures are obvious matters of design choice and the prior art of record displays this fact.

The new rejections using Brawner and Van Leer is set forth to respond to Applicant's amendments concerning marks, symbols and instructions being present on the sidewall.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 6,689,981 discloses that hydroforming is used to create attachment capable ends in tubing for sealing endcaps thereto.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to EDWARD TOLAN whose telephone number is (571)272-4525. The examiner can normally be reached on M-F.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Edward Tolan/  
Primary Examiner, Art Unit 3725